

Filed for intro on 02/14/2001  
HOUSE BILL 1377 By  
Scroggs

SENATE BILL 1654  
By McNally

AN ACT to Amend Tennessee Code Annotated, Title 8,  
Chapter 27 regarding the assignment,  
collection, and subrogation rights of the state,  
local education, and local government insurance  
plans

WHEREAS, the health insurance plans sponsored by the state of Tennessee provide coverage to state employees, employees of certain local education agencies and employees of certain local governments; and

WHEREAS, these plans are funded through contributions from state and local governments and through employee payroll deductions; and

WHEREAS, the funds for the State, Local Education and Local Government Insurance Plans are maintained in discrete accounts by the state of Tennessee; and

WHEREAS, the State, Local Education and Local Government Insurance Plans have, for the convenience of plan participants and the protection of their financial status, adopted the practice of providing benefits for the treatment of accidental injury and/or illness where there is an established or potential liability of a third party; and

WHEREAS the General Assembly finds that the State, Local Education and Local Government Insurance Plans have suffered financial losses due to refusal of parties who have received services funded by State, Local Education and Local Government Plans to reimburse the Plans for recoveries received for the same injuries from other sources; and

WHEREAS the State, Local Education and Local Government Insurance Plans have also suffered losses from ineligible persons using the Plans to obtain services, and then refusing to reimburse the Plans for such services; and

WHEREAS protecting the financial integrity of the State, Local Education and Local Government Insurance Plans and allowing the Plans to collect on obligations owed to them would be to the financial benefit of plan participants and the taxpayers of the state of Tennessee

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Title 8, Chapter 27, of Tennessee Code Annotated is hereby amended by adding the following as a new, appropriately numbered part:

Part \_\_\_\_

Section 8-27-\_\_

(a). As used in this section, unless otherwise specifically required by the context:

(1) “Contractor” means a person or entity under contract with the Plan, including but not limited to an insurance company or an insurance benefit manager.

(2). “Covered Person” means any person who has received services under the Plans, whether the person is a participating employee, former employee, or dependent. For purposes of this section only, “covered person” also includes persons who are not eligible for services under a Plan but who have received services due to fraud or error.

(3) “Plan” or “Plans “ means one or more insurance plans administered by the State Insurance Committee, Local Government Insurance Committee, or Local Education Insurance Committee pursuant to this chapter. Any action taken by the Plan or Plans under this section means an action taken by the Insurance Committee responsible for operating the Plan, or state employees operating under delegation from such Committee.

(4) “Third party benefits” and “recovery” mean the receipt of money, services, or other consideration in compensation for an injury, accident, disease or condition, whether mental or physical, for

which a covered person has received or is receiving benefits under the Plan. The recovery can be by a court judgment, settlement, insurance policy payment or reimbursement, or other out of court payment.

(b) Any covered person has, by operation of law, assigned to the Plan the right of third party benefits to which the covered person may be entitled. The Plan may assert this subrogation interest against any recovery which the covered person receives arising from the same injury, occurrence, condition, or cause for which the Plan has paid or is paying benefits. This subrogation interest may be asserted despite any language in any document or order relating to the recovery that purports to exclude the Plan's interest, or to assign another reason for payment of the recovery. However, the Plan is barred by a Compromise and Settlement pursuant to T.C.A. 20-13-103 which explicitly includes the recovery at issue.

(c) The Department of Finance and Administration may assert and enforce the interests of the Plans granted under this section.

(d) The Plans may assign and delegate a subrogation interest under this section to a contractor as defined in this section. Such delegation shall be in writing and may contain limitations on the delegation. This grant may subsequently be revoked or limited in writing in the sole discretion of the Plan. Any contractor that has received such a delegation of authority may assert and enforce this right. Any lawsuit brought to enforce such a delegated right shall be brought in the name of the contractor receiving the delegation and shall not be in the name of the state.

(e) It is the intent of the legislature that the "made whole" doctrine shall not be a bar to any claim brought by the Plans or their designees, or as a means to limit any recovery to which the Plan is entitled.

#### Section 8-27-\_\_

(a) If any employee or former employee enrolled in an insurance program operated by the State Insurance Committee, Local Education Insurance Committee, or Local Government Insurance Committee allows an individual who is not eligible for benefits to receive benefits, the employee or former employee will be liable to the state of Tennessee for the costs of the benefits received. An employee or former employee allows a person to receive unauthorized benefits if the employee or former employee represents that the person is eligible when the person is not in fact eligible, or fails to notify the state that a person is no longer eligible. It is no defense to a claim under this section that the employee or former employee is subject to a court order to provide insurance for his or her ex-spouse.

(b) If any person obtained benefits under an insurance program operated by the State Insurance Committee, Local Education Insurance Committee, or Local Government Insurance Committee, at a time when the person was not eligible for benefits under this program, the person shall be liable to the state of Tennessee for the amount of the benefits received.

(c) The state has the option of recovering benefits improperly paid from either the employee or former employee who allowed an ineligible person to receive benefits, the ineligible person who received them, or both in any proportion of the total claim as long as the state's total recovery does not exceed the amount of the benefits improperly received. The Department of Finance and Administration, as the agency providing administrative support to the insurance committees, shall have the authority to enforce the right of recovery described under this section.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.